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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



APR 16 2004

FILE: [REDACTED] Office: Nebraska Service Center Date:

IN RE: Applicant: [REDACTED]

PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director approved the application for Temporary Protected Status (TPS) on February 22, 2000. The director subsequently withdrew the applicant's Temporary Protected Status on December 26, 2002, when it was determined that the applicant had failed to establish that he had submitted his annual TPS re-registration for the periods between May 5, 2000 and July 5, 2000 and between May 8, 2001 and August 6, 2001.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. On May 11, 2000, the Attorney General, now the Secretary, Department of Homeland Security (Secretary), announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite period.

An alien who has been granted Temporary Protected Status must register annually with the district office or service center having jurisdiction over the alien's place of residence 8 C.F.R. § 244.17(a).

On October 8, 2002, the director notified the applicant that his Temporary Protected Status would be considered abandoned and denied unless he provided evidence showing that he had filed for re-registration during the periods between May 5, 2000 and July 5, 2000 and between May 8, 2001 and August 6, 2001. In response, the applicant submitted photocopies of a Form I-485 Application to Register Permanent Residence or Adjust Status; a receipt dated July 5, 2000, for the filing of a Form I-130 and Form I-485; and, a Form I-821, Application for Temporary Protected Status, dated July 30, 2001. The applicant also provided photocopies of an undated letter from the Nebraska Service Center instructing the applicant that it is to be used for securing funds from a money order/check dated August 3, 2001, he had submitted that was for the incorrect amount. In addition, the applicant furnished a copy of an August 20, 2001, letter from the Nebraska Service Center informing him that his application for an extension of TPS had been rejected because it was filed after the August 6, 2001, deadline.

The director concluded that the applicant had failed to overcome the grounds stated in the Notice of Intent to Withdraw and withdrew the applicant's TPS on December 26, 2002.

On appeal, the applicant states that he failed to re-register for TPS with good cause. According to the applicant, he failed to register in 2000 because he had an application to adjust status pending. The applicant also asserts that in 2001, he attempted to register but was prevented from doing so by Citizenship and Immigration Services (CIS). The applicant states that he timely submitted an application with the wrong filing fee, the fee was returned, and when it was subsequently re-filed his application was rejected as having been filed too late.

The applicant did have an application to adjust status pending before CIS. That application was denied on November 2, 2001, because the applicant had entered the United States illegally and failed to file an application for adjustment of status before January 14, 1998. The director also found that the applicant's wife failed to appear on August 29, 2001, for her interview regarding a Form I-130, Petition for Alien Relative. The Form I-130, which was therefore denied, was the basis for the applicant's adjustment of status application. Although it is possible that the applicant believed that he was not required to re-register because this application for permanent residence was pending, this was an incorrect assumption on the part of the applicant.

In addition, as discussed above, the applicant provided evidence in response to the director's October 8, 2002 request for evidence that supports his claim that he attempted to file his re-registration in a timely manner during the 2001 re-registration period. The Form I-821, Application for Temporary Protected Status, is dated July 30, 2001, and indicates it was for the applicant's re-registration for TPS. The application is date stamped August 7, 2001. The money order referred to in the undated letter instructing the applicant how to secure funds from it is dated August 3, 2001. And the copy of the August 20, 2001, letter informs the applicant that his application for an extension of TPS had been rejected because it was filed after August 6, 2001. Therefore, the applicant did attempt to timely file his re-registration in 2001.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 if the alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status. 8 C.F.R. § 244.17(c).

In this case, it does not appear that the applicant "willfully" failed to re-register. Therefore, the director's decision to withdraw the applicant's Temporary Resident Status, will, itself, be withdrawn.

The case will be remanded and the director shall fully adjudicate the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's decision is withdrawn. The case is remanded for further action.